

DCP:MJB:dlm

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| <b>DAVID LEE WOMACK,</b>      | : | <b>NO. 1:CV-06-2348</b>     |
| <b>Plaintiff</b>              | : |                             |
|                               | : | <b>(Conner, J.)</b>         |
| <b>v.</b>                     | : |                             |
|                               | : |                             |
| <b>HARLEY LAPPIN, et al.,</b> | : |                             |
| <b>Defendants</b>             | : | <b>Filed Electronically</b> |

**DEFENDANTS D. SCOTT DODRILL, HARLEY G. LAPPIN, JOHN  
VANYUR, NEWTON KENDIG,<sup>1</sup> LINDA THOMAS, AND  
CHUCK MARIOANA’S MOTION TO DISMISS  
SECOND AMENDED COMPLAINT, OR  
ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

Defendants ask this Court to dismiss the Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b), or in the event the Court does not dismiss the Second Amended Complaint in its entirety, Defendants ask the Court to enter summary

---

<sup>1</sup>As Mary Ellen Thoms, originally named in the Second Amended Complaint in he official capacity only, is deceased, Newton Kendig, M.D., hereby is substituted as a party. See Hafer v. Melo, 502 U.S. 21, 25 (1991).

judgment in their favor pursuant to Fed. R. Civ. P. 56(b). A brief in support of this motion will be filed in accordance with M.D. Pa. Local Rule 7.5.

Respectfully submitted,

DENNIS C. PFANNENSCHMIDT  
United States Attorney

---

s/ Michael J. Butler

Michael J. Butler  
Assistant United States Attorney  
PA 81799  
Dawn L. Mayko  
Paralegal Specialist  
United States Attorney's Office  
228 Walnut Street, 2<sup>nd</sup> Floor  
P.O. Box 11754  
Harrisburg, PA 17108  
Tel: 717-221-4482  
Fax: 717-221-2246  
Michael.J.Butler@usdoj.gov

Dated: August 27, 2009

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| <b>DAVID LEE WOMACK,</b>      | : | NO. 1:CV-06-2348            |
| <b>Plaintiff</b>              | : |                             |
|                               | : | <b>(Conner, J.)</b>         |
| <b>v.</b>                     | : |                             |
|                               | : |                             |
| <b>HARLEY LAPPIN, et al.,</b> | : |                             |
| <b>Defendants</b>             | : | <b>Filed Electronically</b> |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on August 27, 2009, she served a copy of the attached

**DEFENDANTS D. SCOTT DODRILL, HARLEY G. LAPPIN, JOHN  
VANYUR, NEWTON KENDIG,<sup>2</sup> LINDA THOMAS, AND  
CHUCK MARIOANA'S MOTION TO DISMISS  
SECOND AMENDED COMPLAINT, OR  
ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

by filing with the Court's ECF system.

Addressee:

Aaron B. Hewitt

Alexis J. Gilman

John H. Shenefield

Maxine M. Woelfling

Thomas G. Scriven

Andrew C. Whitney

Jamie L. Ghen

Morgan, Lewis & Bockius, LLP

Deborah Golden

Washington Lawyers Committee

For Civil Rights & Urban Affairs

**Attorneys for Plaintiff**

s/ Dawn L. Mayko

Dawn L. Mayko

Paralegal Specialist

---

<sup>2</sup>As Mary Ellen Thoms, originally named in the Second Amended Complaint in the official capacity only, is deceased, Newton Kendig, M.D., hereby is substituted as a party. See Hafer v. Melo, 502 U.S. 21, 25 (1991).